

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6105 of 2007()

[CRIME NO.161/2007 OF KANJIRAMKULAM POLICE STATION]

: PETITIONERS/ACCUSED 1 & 2

1. BINU, S/O RAVEENDRAN,
AGED 23 YEARS, KUZHIVILA PUTHEN VEEDU,
VEMOOLA, THANNIMOOLA P.O.,
THIRUVANANTHAPURAM DIST.
2. MANIKUTTAN @ RAJU KUMAR,
S/O MADHAVAN, AGED 27 YEARS,
KARIKATTUVILA VEEDU, PAYATTUVILA P.O.,
PAYATTUVILA, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
(SUB INSPECTOR OF POLICE, KANJIRAMKULAM POLICE
STATION)

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.6105 of 2007

Dated this the 8th day of October 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 and 2. Altogether there are only three accused persons now though in the F.I statement five accused persons were arrayed. An autorickshaw driven by the de facto complainant was stopped. Driver was allegedly attacked. Prior animosity is the alleged motive. In the course of the incident, the purse and three hundred rupees had fallen from the pocket of the victim. That was allegedly taken away by the accused persons. The petitioners are not shown to have any criminal antecedents. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations under Section 394 I.P.C is at any rate, not sustainable and that such allegation is being included solely for the purpose of vexing and harassing the petitioners. The petitioners may, in these circumstances, be granted anticipatory bail, he prays.

3. The learned Public Prosecutor submits that though initially the allegation was made only under Section 379 I.P.C, subsequently the allegation under Section 394 I.P.C. was included. The petitioners do not at any rate deserve to be granted anticipatory bail. They may be directed to surrender before the learned Magistrate and seek regular bail.

4. Having considered all the relevant inputs, I am satisfied that there is merit in the objection raised by the learned Public Prosecutor. I am satisfied that the petitioners must resort to the ordinary and normal course of surrendering before the investigating officer or the learned Magistrate. They must then seek regular bail in the ordinary course. However, I find merit in the submission of the learned counsel for the petitioners that the allegation under Section 394 I.P.C is not justified. Even if the allegations in the F.I statement were accepted in toto, it only shows that on account of prior animosity there was an attack. The contents of the pocket had fallen down and after it had fallen down, it was allegedly taken away by the accused persons. I am, in these circumstances, satisfied that there can be a direction that application for bail to be filed by the petitioners must be considered by the learned Magistrate. The same shall be considered reckoning that no allegation under Section 394 I.P.C is raised and in its place only an allegation under Section 397 I.P.C is raised.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007